IN THE HIGH COURT OF BOMBAY AT GOA

COMPANY PETITION NO.21-S-2001

Simplex Concrete Piles(I) Ltd., a Company incorporated under the Companies Act,1956, having its registered Office at 12/1, Nellie Sen Gupta Sarani, Calcutta - 700 087 and a Branch Office at 501/D, Poonam Chambers, Shivsagar Estate, Worli, Mumbai - 400 018. ... Petitioner.

versus

M/s. Falcons Abodes Private Limited, Calangute, Goa. ... Respondent.

Mrs. Winnie Coutinho, Advocate for the Petitioner.

Mr. J. Godinho, Advocate for the Respondent.

Mr. Ahmed Kunju, Official Liquidator present in person.

CORAM: P. V. HARDAS, J.

DATED: 6TH JUNE, 2003.

ORAL JUDGMENT

This Petition has been filed for winding up of M/s. Falcon Abodes Private Limited, a Company registered under the Companies Act, 1956, having its Registered Office at Falcon Resorts, Calangute, Goa, (hereinafter referred to as the Respondent Company).

2. The Respondent Company has the Authorised Share Capital of Rs.50,00,000/- divided into 50,000 Equity Shares of face value of Rs.100/- each. The issue subscribed and paid up 20 equity shares of Rs.100/- each fully paid. As per the Memorandum of Articles of Association of the Company, the main objects of the Respondent are as follows:-

a). To carry on the business of Estate Developers, Promoters, Builders, Civil Contractors and Engineers, Real Estate Agents, Designers, Building experts Advisor, to act as Consultants, Architectures, Structural Engineering, interior designing, and graphic and to prepare, complete scheme, drawings, plans estimates including layouts of Building Township and other Civil Works.

b). To acquire by concession, grant purchase lease, licence or otherwise any land in India or elsewhere together with such rights as may be agreed upon and granted by Government or Owners thereof and to spend such sums of money as may be deemed requisite as advisable in the exploration, survey and development thereof and to buy, purchase sale, lease, take on lease, exchange or otherwise acquire land, buildings or any tenure of description in India or elsewhere either for investment or resale or for trafficking in account as may be deemed expedient and to construct, alter,

improve, decorate, develop furnish, maintain offices, flats, houses, factories, warehouses, godown, shops, building and other structures, works and convenience of all kinds on any of the lands, immovable properties acquired by the company and to lease, sale, deal in or otherwise dispose off the same.

c). To carry on the business of real estate consultants.

3. The Petitioner claims that the Respondent Company is indebted to the Petitioner Company to the tune of Rs.53,93,471-32 as on 30th June, 2001. The statutory notice was sent by the Petitioner Company to the Respondent Company on 27th July, 2001. The postal acknowledgement is at Exh.'F'. In the reply which is filed on behalf of the Respondent, the Respondent has denied the claim of Rs.53,93,471-32. The Respondent, however, has not substantiated the denial of the claim of the Petitioner. The mere denial of the Petitioner's claim is not enough unless the Respondent Company is able to establish that the denial is bona fide. The Respondent Company has not placed the balance sheet of the Respondent Company to demonstrate that the Respondent Company is in a position to pay the debt of the Petitioner Company but because of the bona fide dispute, the Respondent Company has declined to pay the said debt.

4. During the pendency of this Petition, the parties had arrived at a settlement and Consent Terms have been filed whereby the Respondent Company acknowledged and admitted that an amount of Rs.30,00,000/- was due and payable by the Respondent Company to the Petitioner. By the said Consent Terms, the Respondent Company had agreed and undertaken to pay the said amount of Rs.30,00,000/- in three equal instalments of Rs.10,00,000/- each by cheques dated 30th November, 2002, 30th December, 2002 and 30th January, 2003.

5. Mrs. Winnie Coutinho, learned Advocate for the Petitioner has stated that the Respondent Company despite the Consent Terms has not paid the amount agreed as per the Consent Terms. This fact is not denied by Mr. J. Godinho, learned Counsel for the Respondent.

6. It, therefore, appears that the Respondent Company is unable to pay the debt and in the absence of any material to demonstrate that the Company is in a sound financial condition to meet the liability. According to me, this Petition deserves to be allowed.

7. Mr. Ahmed Kunju, attached to this Court is appointed as Official Liquidator. Petitioner shall

deposit Rs.15,000/- in this Court within four weeks from today.

8. Company Petition is allowed accordingly.

9. Notice be issued to Mr. Ahmed Kunju, Official Liquidator in terms of Rule 109 and 111 of the Companies(Court Rules) 1959.

10. The Petitioner shall also comply with Rule 113 of the Companies(Court Rules) 1959 by advertising the Order of winding up of the Company passed by this Court within 15 days in two newspapers, one in English and the other in Marathi.

P. V. HARDAS, J.

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